



June 14, 2017

Albert Kelly
Director of Superfund Task Force
U.S. Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Mr. Kelly,

The Alliance to Restore Our Waterways (AROW) is a coalition made up of a broad spectrum of industry sectors committed to helping remediate contaminated sediment sites in waterways in a cost-effective and safe manner (see attachment). AROW respectfully requests the U.S. Environmental Protection Agency (EPA) consider the following proposed reforms that are applicable specifically to sediment cleanups. We have developed these reforms in response to an erosion in the Agency's attention to proper guidance and procedure on sediment cleanups, especially at "mega-sites." A more collaborative process is necessary to return sites to communities for productive use in a reasonable timeframe and create real, high-paying, and long-term jobs post clean-up. The following recommendations aim to drive more efficient and timely cleanups.

I. Ensure Remedies are Based on Sound Science and are Consistent Nationwide

1. EPA already has an internal directive and a system of checks—through the National Remedy Review Board (NRRB) and the Contaminated Sediments Technical Advisory Group (CSTAG)—but their recommendations must be an integral and formal part of risk assessment and remedy selection. Thus, EPA should require the output from CSTAG to include a remedy selection recommendation to the NRRB and add the opportunity for potentially responsible parties (PRPs) to present to CSTAG during its deliberations on remedy selection. (This opportunity is in addition to CSTAG's involvement throughout the proceedings at the sediment site.) Similarly, NRRB's deliberations should include a remedy selection recommendation to the Administrator and a PRP presentation opportunity. These two bodies must be empowered in the remedy decision-making process within the Agency.
2. EPA needs an internal policy that ensures sediment remedy plans that exceed \$50 million receive a thorough analysis by the CSTAG, and needs an internal process that creates a rebuttable presumption that Regional Administrators and project managers will implement the remedy selection and other recommendations of EPA's peer review

technical advisory boards—CSTAG and NRRB. Deviation from CSTAG and NRRB’s recommendations should be clearly articulated in the administrative record.

II. Follow EPA’s 2005 *Contaminated Sediment Remediation Guidance* (Guidance) and the *National Oil and Hazardous Substances Pollution Contingency Plan* (NCP)

1. EPA must establish performance-based objectives consistent with the Sediment Guidance and the NCP that promote expedited incremental remedies, which focus on hot spot removal and source control, while tracking natural recovery, so that sites are put back into productive use as expeditiously as possible. This approach—also known as adaptive management—is not making small, periodic changes during the implementation phase, but rather is a tool to be used to scope and select appropriate remedial action. It also allows EPA and PRPs to learn about a site and in turn use that knowledge for similar cases. Remedy oversight by a centralized team with experience in the implementation of remedies at large sediment sites is critical to implementing such a strategy, which is driven by overall risk reduction.
2. The Administrator should require Regions to submit remedy selection consideration memos for review and approval, which are consistent with the NRRB and CSTAG recommendations. For sediment sites, the Remedy Selection Consideration Memoranda submitted by the Regions to the Administrator must include a detailed description of how the proposed remedy comports with the Sediment Guidance and the NCP. Deviation from the Sediment Guidance and the NCP should be justified and clearly articulated in the administrative record.
3. The Agency should revisit the cleanup standard setting process to eliminate overly conservative assumptions made throughout the entire site investigation, remedy evaluation, and selection process that result in unachievable cleanup levels. Recently, EPA adopted policies for the calculation of the Clean Water Act’s Human Health Water Quality Criteria that have their own overly conservative assumptions (e.g. the Fish Consumption Rate) that, if applied in the Superfund program, would lead to even more unachievable cleanup levels and would reduce state flexibility in the cleanup level-setting process.
4. EPA should fully and consistently comply with the NCP’s nine remedy selection criteria,¹ and use a “proportionality test”—between incremental risk reduction and incremental cost—when making remedy selection decisions. “NCP scoring” of new sites should not be used as unlimited discretion to expand the scope of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
5. Under existing NCP criteria, EPA should conduct and publish a sustainability assessment to evaluate social, environmental and economic impacts as a requirement of the remedy development and selection process. For example, any EPA estimate of jobs created from a remedy should reflect the impact on permanent jobs—not temporary construction jobs—and consider the length of time that the site will be closed to private development.

¹ Title 40 Code of Federal Regulations (40 CFR) §300.430(c).

EPA should also assess the economic impact on disruptions and dislocations caused by the remediation, such as impacts to transportation and other local infrastructure.

6. Additionally, the Agency should issue a clear and transparent assessment of regional background and cleanup goals. “Background” is contaminant concentrations that are not attributable to the specific remediation project site releases. Previously, the Agency has set unachievable cleanup levels by failing to follow its own general background policy not to set concentrations less than natural or anthropogenic background (USEPA, 2002). EPA must issue clear guidance about the scientifically-based methods the Agency will use to identify and account for background conditions at impacted sediment sites.
7. EPA should ensure that remedies do not require PRPs to undertake actions that are outside of the scope of CERCLA (protection of human health and the environment), *e.g.*, navigational dredging.

III. Encourage Public-Private Partnerships

1. Large sediment sites pose a challenge to EPA, since these waterways reflect the impacts of hundreds of years of industrial activity and general urbanization, which broadly benefited the public, with potentially thousands of public and private entities having, at one time or another, contributed pollutants to these rivers. Many of these entities no longer exist, and so cannot contribute to these cleanups.
2. In addition to annual appropriations, EPA maintains special account funds, and the Hazardous Substance Superfund Trust Fund, which were collected or obligated for Superfund cleanup. Having a monetary stake in the cleanup process bolsters commitments from both PRPs and the government to more quickly and efficiently identify and implement a remedy. This mixed funding model has been successfully used at contaminated sediment sites under the EPA’s Great Lakes National Program Office, which requires a binding cost-sharing agreement between the EPA and a cooperating agency or entity. Enhancing the use of mixed funding at Superfund mega-sites could help accelerate cleanups.
3. EPA should also engage in more collaboration with the Army Corps of Engineers at sediment sites. EPA should partner with the Corps so that navigational dredging can be coordinated with sediment remediation, expediting the restoration of these waterways. Greater collaboration with the Corps can also reduce the cost of sediment remedies by making use of the Corps’ lower cost sediment disposal facilities.
4. EPA should improve its accounting transparency of Agency and government partners’ oversight costs—a critical element for any successful partnership.

IV. Integrate Stakeholder Input in New and Recent Records of Decision

1. For large sediment sites, EPA should use its existing authority to develop an approach to remediation based on greater collaboration with PRPs, state governments, sister agencies

and private and public stakeholders to identify high priority and high risk hot spots for early action.

2. Of particular concern is EPA's most recent RODs at contaminated sediment sites, including Portland Harbor, the Lower Passaic River, the Lower Duwamish Waterway, and the Gowanus Canal—multi-billion and multi-million dollar cleanups—which prescribe remedies that are inconsistent with the Sediment Guidance, and need the aforementioned principles applied to the cleanup process to make productive progress.

We hope to continue conversations with you and your staff about these suggestions. If you have any questions, please contact do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink that reads "Rich Gold". The signature is written in a cursive, flowing style.

Rich Gold
Executive Director
Alliance to Restore Our Waterways